

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9975 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA**

Sd/-

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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KRUSHNAKANT BHAVNISHANKER JOSHI - Petitioner(s)

Versus

DEVELOPMENT COMMISSIONER PANCHAYAT & 1 - Respondent(s)

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Appearance :

MR MD RANA for Petitioner(s) : 1,
 MR KL PANDYA AGP for Respondent(s) : 1,
 MR YOGESH S LAKHANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**Date : 16/02/2006****ORAL JUDGMENT**

1. The prayers made in the petition are to the effect that respondent No.2, Chief Officer of Una Nagarpalika, may be directed to pay arrears of retiral benefits like pension, gratuity and monthly pension considering the petitioner to be entitled to

the pay-scale of Rs.1400-2300; and to direct fixing of his pay-scale appropriately in the pay-scale of Rs.425-640 under the 3rd Pay Commission Recommendations accepted by the Government of Gujarat and to make payment of arrears in respect of the period from 1.12.1983 to 8.10.1986. The petitioner has also claimed arrears of the difference of salary with effect from 1.1.1986. Even after pendency of the petition for 12 years, none of the factual averments in the petition is substantiated by any material. In view of the affidavit-in-reply filed by respondent No.2 and the factual disputes raised therein, the learned counsel sought to argue purely on the basis of legal principles, irrelevant judgments and assumptions of facts.

2. According to the petition, the petitioner's pay was fixed in the pay-scale of Rs.330-560 as per the 3rd Pay Commission Recommendations, that he was a trained sanitary inspector and that, therefore, he should have been fixed in the pay-scale of Rs.425-600. He was paid the arrears in the lower grade on 30.11.1983 and, from 1.12.1983 to 8.10.1986, a lumpsum amount was paid. That he was appointed as food inspector whose pay-scale was Rs.425-600 and, therefore, he was entitled to the pay-scale of Rs.425-600 with effect from 1.1.1973 even while working as sanitary inspector which is a post equivalent to the post of food inspector. It is also

averred that: *"The petitioner was an old municipal employee and after constitution of the Gujarat Panchayats Act, he was allocated and absorbed in the panchayat. In the matter of grant of benefits under the judgment of the Supreme Court and by virtue of the circular, he should be given the same treatment like the other former employees who were absorbed in the panchayat service. His service conditions cannot be changed to his disadvantage. It may have to be pointed out that the Nagarpalika has come into existence converting Una Nagarpalika but the obligation in the fulfilment of service conditions cannot be varied."*

3. The petitioner had retired on 31.5.1990 after reaching the age of superannuation. In the affidavit-in-reply filed by the Chief Officer -respondent No.2, it is stated that he had recently taken charge of his office. According to him, the arrears on the basis of 4th Pay Commission Recommendations were already paid to the petitioner long back on 18.1.1999 and he was not entitled to the benefits of the 5th Pay Commission Recommendations as they had come into effect from 1.1.1996, before which the petitioner had retired. As for the grade of food inspector, it is averred that the petitioner was appointed as sanitary inspector and at no point of time he was appointed as food inspector and he worked as sanitary inspector till the date of his

retirement. The State Government had, vide order dated 6.9.1983, directed to place sanitary inspector in the pay-scale on the basis of the Government Resolutions dated 24.6.1983 and 20.7.1983. The petitioner was accordingly placed in the pay-scale as expressly ordered by the District Panchayat by its letter dated 6.9.1983. Reading a copy of that order, which is annexed as Annexure-R4, it is clear that pay fixation according to the G.C.S. Pay Rules, 1965 was not to be made. The name of the petitioner is specifically mentioned in that order and that order was never challenged by the petitioner.

4. In the above facts and circumstances, neither any factual basis is made out for the oral assertion that the petitioner was a civil servant or a government servant allocated by the Nagarpalika after his initial appointment in November, 1958 nor is any ground made out for the reliefs which are prayed in the petition. Therefore, the petition is found to be misconceived and devoid of any factual or legal basis. Accordingly, it is rejected, in the facts and circumstances, with costs of Rs.2000/- which shall be paid by the petitioner to the respondent No.1. Rule is discharged.

Sd/-

(D.H.WAGHELA, J.)